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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Darius Lee Johnson,

13 Defendant.
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No. CR-24-05610-001-TUC-JCH (BGM)

ORDER

15 Before the Court is the Government's November 8, 2024 *Henthorn* Memorandum
16 requesting that the Court conduct an *in camera* review of information received from the
17 United States Customs and Border Protection. The information concerns a Border Patrol
18 agent who may be called to testify at a November 25, 2024 suppression hearing in this case.
19 According to the memorandum, the agent was arrested on March 15, 2022, for "extreme
20 DUI," and during the agent's arrest, he stated that he was a Border Patrol agent. The agent
21 received a twenty-one day suspension for conduct unbecoming of an agent and misuse of
22 position. The Government requests that the Court determine whether this information
23 needs to be disclosed to defense counsel.

24 The Court has conducted an *in camera* review of the memorandum under *United*
25 *States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991). *Henthorn* dictates that the prosecution has
26 a duty to examine the personnel files of testifying law enforcement officers and to disclose
27 information in the files "that is or may be material to the defendant's case." 931 F.2d at
28 31. Material information includes "evidence that might tend to impeach a government


1 witness,” *United States v. Price*, 566 F.3d 900, 903 (9th Cir. 2009), and information that
2 “could cast doubt upon their credibility,” *United States v. Jennings*, 960 F.2d 1488, 1490
3 (9th Cir. 1992). *See also Milke v. Ryan*, 711 F.3d 998, 1006 (requiring disclosure of a
4 testifying officer’s personnel file that documented a five-day suspension for dishonest
5 conduct). The information contained in the Government’s memorandum is material, and
6 the Government is instructed to disclose the information to the defense.

7 **IT IS ORDERED** that the Clerk of the Court shall file the Government’s *Henthorn*
8 Memorandum UNDER SEAL on the case docket.

9 **IT IS FURTHER ORDERED** that counsel for the Government shall disclose the
10 *Henthorn* information to Defendant.

11 **IT IS FURTHER ORDERED** that counsel for the Government and Defendant
12 shall receive a copy of this Order.

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14 Dated this 8th day of November, 2024.

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18 Honorable Bruce G. Macdonald
United States Magistrate Judge
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